

Brad M. Purdy
Attorney at Law
Bar No. 3472
2019 N. 17th St.
Boise, ID. 83702
(208) 384-1299
FAX: (208) 384-8511
bmpurdy@hotmail.com
Attorney for Intervenor
Community Action Partnership
Association of Idaho

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. PAC-E-13-04
OF PACIFICORP DBA ROCKY MOUNTAIN)	
POWER TO INITIATE DISCUSSIONS WITH)	COMMUNITY ACTION
INTERESTED PARTIES ON ALTERNATIVE)	PARTNERSHIP ASSOCIATION
RATE PLAN PROPOSALS)	OF IDAHO'S RESPONSE TO
)	ROCKY MOUNTAIN'S
)	OPPOSITION TO PETITION FOR
)	INTERVENOR FUNDING

I. INTRODUCTION

COMES NOW, the Community Action Partnership Association of Idaho (CAPAI) and, pursuant to Rocky Mountain Power's Opposition to CAPAI's Request for Intervenor Funding filed with the Commission on Friday, September 27, 2013, replies as follows.

II. ARGUMENT

1. Rocky Mountain Opposition Vague and Not Supported by Procedural Rules.

A. Section 1.

The Company begins its opposition to CAPAI's funding petition with an illegitimate supposition:

Based on the petition and the attached "Itemized Expenses" it is not clear to Rocky Mountain Power what portion of this request is related to CAPAI's participation in settlement discussions, preparation of its

witness testimony, and preparation for the hearing, and what portion is related to the Motion to Compel filed by CAPAI.

Opposition, p. 1.

Though Rocky Mountain refers in section 2 to "Rule 162," it offers no legal basis for the objection quoted above and merely presumes that CAPAI was required to make it "clear" to the Company precisely what portion of the requested funding was applicable to certain unilaterally selected tasks (e.g., briefs in support of motions) identified by Rocky Mountain in an after-the-fact fashion. There is not now, nor has there been for at least 25 years, any requirement that a party seeking intervenor funding break out its funding request into specific tasks created and identified after the fact by the public utility involved. Were a utility allowed to arbitrarily manufacture such requirements in this manner, intervenor funding would be rendered unobtainable. Section 1 is nonsensical and is an objection with no stated legal support or logical rationale.

B. Section 2.

Rocky Mountain begins by characterizing CAPAI's funding petition as containing a "lack of transparency," apparently referring back to the non-existent requirements unilaterally imposed by the Company in Section 1.

The Company then argues that because of this alleged lack of transparency:

[t]he Commission should require CAPAI to comply with Rule 162 and provide a detailed accounting regarding the number of hours that were spent on the Motion to Compel and Brief in Support filed by CAPAI and CAPAI's premature and disingenuous Reply to Response to Motion to Compel filed by Rocky Mountain Power, and disallow all costs associated with those pleadings.

Opposition, p. 2 [Emphasis added].

Criticizing the Petition for Intervenor Funding as a "brief," Rocky Mountain further proposes that the costs of preparing the funding petition itself be denied. *Id.* Rocky Mountain also seeks to deny funding for CAPAI's Reply to Rocky Mountain's Response to the Motion to Compel labeling the Reply as "premature and disingenuous." *Id.*

Rule 162 of the Commission's Rules of Procedure, IDAPA 31.01.01.162, outlines the expense itemization required in a funding petition. Subsection (01) states that the petition must contain "an itemized list of expenses that the intervenor requests to recover broken down into categories such as legal fees, witness fees, or reproduction fees" and that "[l]egal and witness fees shall, where applicable, indicate hourly rates." Rocky Mountain's demand for a "detailed accounting," therefore, has no basis in Rule 162 as suggested by the Company.

CAPAI's funding petition provided all of the itemized expenses required using the precise verbiage found in Rule 162(01). In fact, the expense itemization provided by CAPAI in this case is identical in format, scope and substance to literally every funding petition CAPAI has filed in the past decade, beginning with its first formal intervention and participation as a party before this Commission in Idaho Power's 2003 general rate case.¹ Throughout that decade, no party, nor the Commission itself, has ever challenged or even questioned any aspect of the expense itemization employed by CAPAI, until now. Rocky Mountain is effectively rewriting Rule 162 in a manner that exclusively targets and is discriminatory to CAPAI and would lead to bad precedent.

There are also serious practical problems with Rocky Mountain's proposal. As set forth in the Third Affidavit of Brad M. Purdy, CAPAI's legal counsel keeps relatively detailed timesheets of the work he performs for CAPAI but, with respect to work performed on a given day for a given client, it is simply not possible to segregate tasks performed into sub-categories.

¹ Case No. IPC-E-03-13

For example, a telephone call, email, or even legal research might relate to several disparate tasks that legal counsel is simultaneously undertaking. There is no way to subjectively allocate every task into a specific category, especially when that category is created at the utility's whims long after the timesheets have been completed. The Company is suggesting a degree of billing precision that is impractical and certainly not commonly performed in the legal profession

Though certain parties in relatively recent years have voluntarily chosen to include what appears to be their actual timesheets billed to their clients in a particular PUC proceeding, this is not the result of any rule or specific Commission requirement. CAPAI asserts that providing actual timesheets sent by an attorney to his or her client comes dangerously close to a violation of attorney-client confidentiality. This is because, especially in a contested proceeding, such timesheets are quite likely to reveal litigation strategy and other highly sensitive and confidential information. CAPAI is not questioning the decisions or practices made or engaged in by other intervenors, but states that CAPAI chooses not to waive its attorney-client confidentiality.

Regarding Rocky Mountain's contention that CAPAI's Reply brief to the Company's Response to the Motion to Compel was "premature and disingenuous,"² CAPAI notes that up to that point in time, the Company insisted on stating its refusals to respond to CAPAI's discovery in emails and Word documents attached thereto. Despite Rocky Mountain's ultimate admissions to the contrary³ it seemed apparent to CAPAI that the Company would continue to stubbornly refuse to file a proper response to CAPAI's Motion to Compel dragging out the dispute through back and forth emails containing Rocky Mountain's proposals and renegeing of those proposals. Given the fact that precious little time remained prior to hearing, and because CAPAI intended to set the matter for oral argument in just days CAPAI filed, on August 6, 2013, its Reply to Rocky

² *Opposition at p. 2.*

³ *See, Rocky Mountain Response to Motion to Compel, p. 3.*

Mountain's email/Word document position. Rocky Mountain finally took CAPAI's Motion to Compel seriously and filed a Response on August 9, 2013. Because CAPAI had already replied to what it knew would be Rocky Mountain's response position, CAPAI avoided "unnecessary waste" and stood on the merits of its August 6, 2013 Reply which it had a right to file. The timing was the result of Rocky Mountain's strategic tactics. Thus, the Reply brief was not "premature and disingenuous."

Regarding the Company's position that expenses incurred in preparing CAPAI's funding petition should be denied, the Third Affidavit of Brad M. Purdy filed contemporaneously herewith states that all work performed in preparing the brief was never billed to CAPAI and is not included in the final expenses sought by CAPAI's funding petition. In fact, CAPAI rarely, if ever, seeks recovery of expenses incurred to prepare funding petitions filed in any proceeding. This is why there is no mention of the work performed in seeking intervenor funding in CAPAI's petition.

C. Section 3.

The Company states: "[a]s described in Rocky Mountain Power's Response to CAPAI's Motion to Compel...Rocky Mountain Power fully and properly responded to CAPAI's data requests in a timely fashion." *Opposition at p. 2*. The Company further argues that CAPAI's contention that the Company failed to fully respond to discovery "is disingenuous and ignores the Commission Rules and Idaho Rules of Civil Procedure." Regarding CAPAI's Motion to Compel, the Company concludes Section 3 with the contention that "CAPAI's Motion to Compel, its Brief in Support, and its Reply were all unnecessary, a waste of party and Commission resources, and should not be supported by intervenor funding. *Opposition, pp. 2-3*."

Thus, despite its own Motion to Strike CAPAI's pleadings related to the Motion to Compel, Rocky Mountain has voluntarily and fully placed those pleadings, and the facts involved in the discovery dispute, back on the table. Rocky Mountain cannot strike CAPAI's discovery-related pleadings yet continue to quote and reargue its own discovery-related briefing. The Company's tactics have placed CAPAI in the position of having to either assume that the Commission will not be influenced by Rocky Mountain's re-argument of the discovery dispute pleadings as misconstrued by the Company, or recreate the pleadings stricken by the Commission in order to fairly respond to Rocky Mountain's re-arguments. The Company cannot have it both ways. This factual dispute remains relevant only because Rocky Mountain now seeks to reargue a stricken set of pleadings and deny CAPAI intervenor funding for any expenses related to its Motion to Compel on the basis that those expenses constitute an "unnecessary waste." *Opposition*, pp. 2-3.

Rocky Mountain has still not relinquished its dogged and bewildering insistence that it never refused to fully respond to CAPAI's discovery requests. This fact is contradicted by Rocky Mountain's Response to CAPAI's Motion to Compel. *See, Response Brief at p. 3.*

In truth, CAPAI's Motion to Compel was not a waste at all, as evidenced by Rocky Mountain's capitulation, just days prior to oral argument on the motion, when it provided a response to discovery request 6(b). Thus, had CAPAI not filed its Motion to Compel, Rocky Mountain would not have provided the information that CAPAI is now making use of to analyze the Company's existing rate design and whether it is fair, just and reasonable to Rocky Mountain's low-income customers. Thus, the Motion to Compel was successful, not wasteful.

Like CAPAI, the Company must live with its actions and cannot claim that CAPAI is not entitled to recover expenses related to the Motion to Compel when that motion led to the very data in dispute.

Section 4.

The Company concludes its brief in opposition with the requested relief as follows:

Accordingly, Rocky Mountain Power requests that the Commission deny CAPAI's request for intervenor funding in the case for costs associated with the Motion to Compel and associated pleadings. Rocky Mountain Power takes no position on the remainder of CAPAI's request for intervenor funding.

Opposition at p. 3.

Rocky Mountain's requested relief again creates the problem inherent in a vague and sweeping opposition to a funding request based on unilateral and misinterpreted interpretations of the Commission's procedural rules and requirements manufactured by the utility at the end of the case. CAPAI fully complied with the Commission's procedural rules regarding intervenor funding as it has for the past ten years. Any argument by Rocky Mountain that actual timesheets must be provided violates the attorney-client privilege and is not practical as described above.

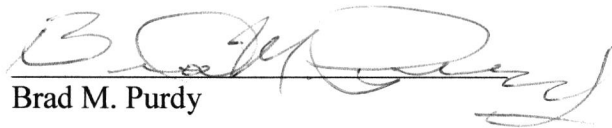
III. CONCLUSION

CAPAI respectfully submits that its Petition for Intervenor Funding fully complies with the Commission's applicable Rules of Procedure. Rocky Mountain's arguments that CAPAI's Motion to Compel and supporting pleadings should not be recovered through intervenor funding should be entirely rejected because the Motion to Compel was successful and was withdrawn only as a good faith measure by CAPAI and because it successfully motivated Rocky Mountain to fully respond to discovery. The Company exploited CAPAI's good faith with its Motion to Strike which it now wishes to ignore by rearguing the very pleadings stricken.

The expenses related to CAPAI's Petition for Intervenor Funding are not included in the funding petition and, therefore, not capable of being rejected. CAPAI had a legal right to file its Reply to Rocky Mountain's Response brief and it is part of the Motion to Compel that proved successful.

CAPAI respectfully submits that the Commission reject all of Rocky Mountain's arguments and requests and make a determination on the merits of CAPAI's funding petition as it stands.

RESPECTFULLY SUBMITTED, this 30th day of September, 2013.



Brad M. Purdy

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30th day of September, 2013, served a copy of the foregoing document on the following by electronic mail and/or U.S. mail, first class postage.

Ted Weston
Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111

Daniel E. Solander
Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111

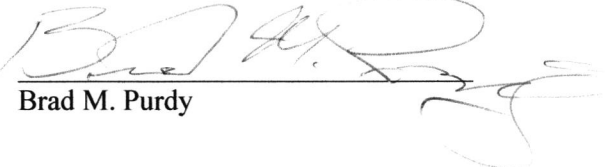
Randall C. Budge
Racine, Olson, Nyc, Budge & Bailey
201 E. Center
PO Box 1391
Pocatello, ID 83204-1391

James R. Smith
Monsanto Company
P.O. Box 816
Soda Springs, ID 83276

Benjamin J. Otto
Idaho Conservation League
710 N. 6th St.
Boise, ID 83702

Ronald Williams
Williams Bradbury, P.C.
1015 W. Hays St.
Boise, ID 83702

Ken Miller
Snake River Alliance
Box 1731
Boise, ID 83701
Eric L. Olsen
Racine, Olson, Nye, Budge & Bailey
201 E. Center
PO Box 1391
Pocatello, ID 83204-1391



Brad M. Purdy